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HOUSE BILL 3360

By Kisber

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 4, relative to clarification of the authority of the comptroller of the treasury relative to public contracts.

WHEREAS, the general assembly finds that some entities contracting with the state or local governments to perform government services have questioned the authority of the comptroller of the treasury to examine such records of such agencies as may be necessary to ensure that public funds are expended in accordance with the public purpose for which they were contracted; and

WHEREAS, the general assembly recognizes that the comptroller already has the authority to examine such records of such entities, and it is the intent of the general assembly to clarify that authority through a clarifying amendment; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 8, Chapter 4, Part 1, is amended by adding the following language as a new, appropriately designated section:

Section ____.

(a) Entities contracting with the state or local governments to perform government services shall be subject to audit by the comptroller of the treasury to

assure that public funds are expended in accordance with the public purpose for which they were contracted.

(b) Notwithstanding any other provision of law or existing contract, the comptroller of the treasury is hereby authorized to conduct an audit of the records of any entity contracting with state or local government entities created under and by virtue of the statutes of the state of Tennessee, if such contracting entity derives fifty percent (50%) or more of its gross revenue from such state or local entity or entities. All books, records, documents, and other evidence pertaining to the receipt, accounting for, use and/or expenditure of any public funds by any such contracting entity shall be available for examination by the comptroller of the treasury during normal business hours through on-site review. In the alternative, and in the comptroller's sole discretion, such records may be provided through the mail or other methods of data transmission. Such audits shall take place as often as necessary, and to the extent necessary, in the discretion of the comptroller of the treasury and in conformance with generally accepted auditing standards, to determine whether public funds received by the entity were properly accounted for and expended in accordance with the public purpose for which the entity was contracted. The comptroller of the treasury shall have such authority notwithstanding whether the contract is in the form of a fee-for-service contract, a vendor contract, a cost reimbursement contract, any combination of these types of contract, or any other form of contract.

(c) The comptroller of the treasury shall have the authority to determine whether a contracting entity is subject to audit pursuant to this section. The comptroller of the treasury shall give advance written notice of intent to audit to the contracting entity and its chief executive officer. If the contracting entity contends that it is not subject to audit, it shall, within five (5) business days of

receipt of the notice, file with the comptroller of the treasury a written objection to the audit. Such objection shall be made under oath and accompanied by an income statement or such other statements or financial records as would, within the sound discretion of the comptroller of the treasury and consistent with generally accepted auditing standards, establish that the contracting entity is not subject to audit. The failure to file such an objection shall be deemed a waiver of any objection to the audit. Notwithstanding any other provision of law to the contrary, any income statements or other financial documents filed with the objection shall become a part of the Comptroller's confidential work papers and shall not be open or otherwise subject to public inspection.

(d) If a contracting entity, after having received notice of intent to audit, refuses to grant access to such books, records, documents, and other evidence of the contracting entity as may be necessary, in the judgment of the comptroller, to accomplish the audit, the comptroller of the treasury shall have the authority to make application to the chancery court of Davidson County for an order requiring the contracting entity to show cause why the entity is not subject to audit by the comptroller of the treasury. In the absence of such a showing by the contracting entity, the court shall grant a permanent or temporary injunction compelling the contracting entity, its officers, agents, and attorneys, to grant access to such books, records, documents, and other evidence to the comptroller of the treasury or his duly appointed representatives. The chancery court shall have the authority to assess costs of enforcement, including reasonable attorneys' fees, against the contracting entity, its officers and agents, and any other person responsible for objecting to the audit or refusing access to such books, records, documents, and other evidence if the court finds that there were no substantial grounds for objecting to the audit or refusing access.

(e) The comptroller of the treasury shall have the authority to promulgate rules pursuant to title 4, part 5, of this code, consistent with this section for the purpose of ensuring the proper and orderly conduct of audits and other examinations of contracting entities within the meaning of this section.

(f) This section is not intended to abolish any authority now held by the comptroller of the treasury, and shall not be deemed to repeal by implication any existing law.

SECTION 2. The provisions of this act are declared to be remedial in nature and to that end shall apply to all contracts in force when this act takes effect.

The provisions of this act shall be retroactive to January 1, 1992.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.